

REMARKS

Upon entry of the present amendment, claims 1-5 will remain pending in the above-identified application and stand ready for further action on the merits.

Support for the amendment to claim 1 is found at page 23, lines 20-21 of the original specification. No new matter is being introduced by the present amendment to claim 1.

Co-pending Application Letter

Submitted herewith is a co-pending application letter informing the Examiner of co-pending US application numbers 10/725,413 and 10/725,471.

Terminal Disclaimers

Also submitted herewith are two (2) terminal disclaimers, which disclaim the terminal portion of any United States Patent issuing in the matter of the above identified application that would extend beyond the expiration date of any United States Patent issuing in the matter of parent application number 09/984,982 (now US 6,780,531) and co-pending US application number 10/725,471.

Double Patenting Rejections

Claims 1-5 have been rejected for allegedly conflicting with claims 3-4 and 6-7 of parent application number 09/984,982 (now US

6,780,531) and claims 1-5 of co-pending US application number 10/725,471. Reconsideration and withdraw of these rejections are respectfully requested based on the following considerations.

In the present amendment, claim 1 has been amended so that none of the instantly pending claims 1-5 are identical in scope with any pending claims in either of parent application number 09/984,982 (now US 6,780,531) or co-pending US application number 10/725,471. In this respect, the Manual of Patent Examining Procedure (MPEP) § 804, specifically provides as follows:

In determining whether a statutory basis for a double patenting rejection exists, the question to be asked is: Is the same invention being claimed twice? 35 U.S.C. 101 prevents two patents from issuing on the same invention. "Same invention" means identical subject matter. *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1984); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957).

Therefore, since the same invention is not being claimed twice, withdraw of the outstanding double patenting rejections is respectfully requested at present.

Further, based on the filing herewith of appropriate terminal disclaimers, it is submitted that it would be entirely improper for the USPTO to reapply either of the outstanding double patenting rejections as a nonstatutory obviousness type double patenting rejection. In this respect, the MPEP at § 804, also provides as follows:

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Accordingly, based on the above considerations, allowance of each of pending claims 1-5 is submitted to be both appropriate and required at present.

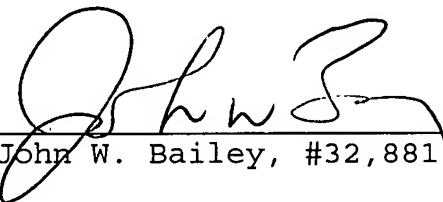
CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
John W. Bailey, #32,881

JWB:enm
0020-5201P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachment(s): Co-pending Application Letter (1)
Terminal Disclaimers (2)